

28 pc
2020

288 CF

INTO THE

BY A MEMBER OF THE MIDDLE TEMPLE SOCIETY.

O N D O N:

S
VK
916
END.

TX
E 592°

E N I O U I R Y

(BY WAY OF ESSAY)

INTO THE

Origin of Feudal Tenures

A N D

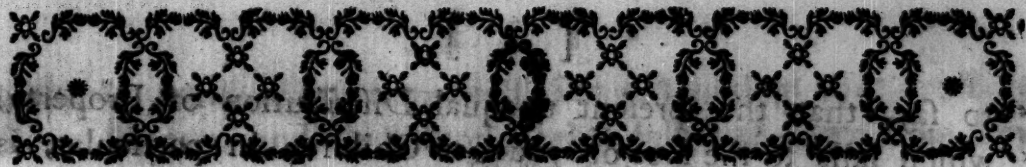
The Rights of Adventitious Succession to Lands in Faimo-
century only, as the laws of England now stand.

MAR 9 1928

BY A MEMBER OF THE MIDDLE TEMPLE SOCIETY.

L O N D O N :

Printed by J. B. L. [illegible] at the [illegible] in [illegible].
MILTON.



ENQUIRY, &c.

Quemadmodum in hac Republicâ nati fuimus, nos Juniores; si ab omnibus Rebus quæ ad LIBERTATEM pertinent, sine Culpâ nostrâ, proscripti sumus? — Anonym.

Virginibus, Puerisque canto. — VIRGIL.

— Te Auspice, Cæsar!

THE Roman History, lately published by N. Hooke, Esq; seems to be compiled by an impartial and masterly Hand; and such Authors deserve every Encouragement due to a Polybius. The Remarks on it by the Monthly Reviewers confirm that Opinion; where, on the Article of Feudal Tenure, these Literary Critics say, “It is certain that no Kingdom can long be maintained in internal Peace and Security without an Agrarian Law; by which we do not mean an equal Distribution of Property to every Member of the Commonwealth, but such an Allotment only as may correspond with the true Spirit of our British Constitution; and we are bold

“to say, that the present unequal Distribution of Property,
 “which falls to the Lot of younger Children in particular, is
 “an Instance of Oppression that can never be reconciled with
 “our Ideas of a Free State. This was first introduced under
 “the *Norman* Tyranny, as best suited to support it; but since
 “these Feudal Tenures are happily abolished among us, and
 “the heritable Jurisdictions in *Scotland* very lately also, what
 “just Reason can exist whereby the Right of Primogeniture
 “should continue?”

THESE sensible Reflections first excited my Curiosity to attempt
 an Enquiry into the Doctrine of a Tenure, which keeps so
 many Thousands of our Fellow-Subjects, Male and Female,
 not only in real Indigence, but, what is worse, a most abject
 and servile Dependence on the Caprice, Vanity, or Folly, of an
 elder Brother.

Fervens difficili Bile tumet Jecur.—HORAT.

IN looking into the Common Law, Civil or Statute Law
 Books, perhaps we shall not find this unreasonable Prerogative
 of seizing, to the Use of one Individual only, the Freehold
 Landed Estate of a whole Family; for at best it seems to have
 obtained the Force of Law from long Prescription only, a blind
 Submission to which cannot bear Test in any Country that
 is not under the Influence of Popish Ignorance, or Despotic
 Sway.

IN good King *Alfred's* Days, Gavel-kind was the sole
 Tenure, and to this Day remains in full Force in several Parts
 of *Kent*, and would throughout the Whole, as their brave
 Ancestors stipulated for them, but for the base and unnatural
 Pride of a few Families in that County, who obtained the Act
 of the 31st of *Henry* the VIIIth, Cap. 3. which permitted
 them

them to settle it on the eldest Son; breaking the Trust of sacred Liberty, and the natural Rights delivered down from Age to Age by their renowned Forefathers.

“ Oh! never let it perish in our Hands,

“ But piously transmit them to our Children!”—ADDISON.

If it be alledged, that this Usurpation upon the Portions of the younger Branch of all the noble and antient Families in the Three Kingdoms, hath been so long winked at, in order to support the Title or vain Grandeur of some, although

Nobilitas sola atque unica Virtus est;

let it be replied, that in Case even Virtue and Knowledge could be conveyed with the Estate, (what doth not always prove so) would that defend the Denial of Justice due to Brethren and all Mankind? No; the hellish Politics of *Machiavel* do not patronize an Act so heinous; for they rather recommend a partial Evil, in order to attain a general Good (true Jesuitism): But this (as if a genuine Tenet of *Pandæmonium*, perverting the Rule of its own Ministers) does a general Evil, for what scarce ever yet hath produced even a partial Good.

Est Deus in nobis? agitante calescimus illo;

Impetus hic sacrae Semina Mentis habet.

WRITERS in general agree, that Population, with a more equal Partition of Wealth, is the true Basis whereon every Nation will find its internal Strength and Safety: But have those wise Maxims been adhered to in a Nation where the following Cases, with many more of the like Kind, are notorious? For Instance, suppose a Man possessed of a large Freehold Estate dies Intestate, leaving neither Marriage Settlement nor Personal Affetts, doth not the Widow, together with all the younger Children, become as dependent on the eldest Son, (who seizes

the Whole as Heir at Law) as the meanest Pensioner in *Chelsea* College? The Court of Chancery, 'tis true, upon Application, may allow a scanty Income to bring up these Children, if Minors (accountable, however, to the Heir when at Age). Yet, and in this Age too, a Lady of the first Quality pleaded personally in *Formâ Pauperis*, (not having wherewith to retain Council) in order to obtain a very moderate Maintenance from her own Son: Besides others, who, though legally intitled to a Jointure, have lived and died in Poverty and Distress, through Want of Means, or, perhaps, by being too tender Mothers to sue their thoughtless and extravagant Sons.

MANY Thousand Widows, with their deserving Daughters, are at this Time lingering out their Days in silent Submission to their Fate, boarded at obscure Farm-Houses in every County in *England*, while the doughty 'Squire is in Town, squandering away his dirty Acres among Pimps and Parasites.

Interdum Lacrymæ Pondera Vocis habent.

Now and then, indeed, an elder Brother, more scrupulous, may permit his young and beautiful, yet unportioned, Sisters to live in their Father's House; one in the Occupation of House-keeper; another, Laundress; a third, Teacher to their pretty pert Nieces, who, if not precluded by my Lady's (their Sister-in-Law's) Waiting-Woman, may now and then be favoured with a tarnished Silver-and-Gold Stuff, or a cast-off Silk Gown, exposed, however, to the Taunts and Sneers of all about them, until more merciful Death, brought on immaturity by sighing and repining at such barbarous Treatment, puts an End to their Being, to the great Joy of their good Brother, who thereby saves the Danger of being asked for a Portion:

Hinc illæ Lacrymæ! — — —

Mehercule! Homo sum, et nihil humanum à me alienum puto.

As

As to the younger Brothers, why the World is wide; and these being also proscribed at their Birth, may enter the Army, Navy, or study the Law, provided the Four Thousand Pounds per Annum elder Brother is pleased to spare Five Hundred Guineas to set them out in the World: But the contrary oftener being the Case, they may enjoy the Run of the Kitchen, (*quam diu se serviliter gesserint*) as Groom of the Stables, Yeoman of the Wine Cellar, Poacher for Hares and other Game, or as the standing Butt of drunken Freeholders, &c. until their Hearts are broke, through the Torts and Wrongs they meet with in the Mansion-house of their own Father and Family.

*O nimium potens, quando Parentis Sanguinis
In Vinclo tenes, Primo-genitus!—*

Happy would Ten Thousand of not the least deserving of our Fellow-Subjects be, if some able Hand would assist in laying this Case at his Majesty's Feet, provided they can here, with the great *Addison*,

“ In the Bashfulness of fearful Duty, read as much as from
“ the Tongue of saucy and audacious Eloquence.”

IN Case an only Brother to one of these Large-Estated Men, on whom Providence had bestowed, (it may be) after twenty Years close Application to the Profession in which he was educated, a greater Affluence than what was due from his Patrimony, be thereby discharged of his Vassalage; can he do better than attempt to plead the Cause of innocent Posterity (though no Relief could be expected for this Generation)? Is not the miraculous Substitute of his own Grievance a very sufficient Fee for a Counsel, who therein hath

———— *Mens conscia recti,
Nil conscire sibi, nullâ pallescere Culpa?*

WHAT

What mortal, or deeper, original, Sin can affect the younger Branch of Families more than the rest of Mankind; for which they are not only debarred from the Rights and Inheritance due to their Birth, but are also (from the Consequence of the Glare and Splendor they see while brought up in their Father's House) rendered very often utterly incapacitated to enjoy that glorious Dispensation, allowed us all, of working out a Freedom and Independence by the honest Labour of their own Hands?----“ I cannot dig, and to beg I am ashamed,” such may say when they are turned out of their native Mansion-Houses.

Nos Patriæ Fines, et dulcia linquimus Arva!

Nos Patriam fugimus — — —

An Alliance with a comfortable Mechanic, or a reputable Tradesman, the Pride of Family doth not permit, if ever tendered for the Sisters; and the Brothers may labour out their best Days in either Law, Army, or Physic, before they obtain a Competency for matrimonial Life. Thus are four Fifths of most Families annihilated to the public Service: Deprived of their Freeholds, they cannot vote even for Means to preserve their Country in Plenty and Peace! *Heu Nefas!* Surely the Dregs of Liberty only intoxicate a People who suffer so infamous a Badge of Papal Usurpation, an increasing Monopoly of (that most essential Part, the *Alpha* and *Omega*, of all human Views and Projects) the Freehold Lands of *Great-Britain*. What is Family, Estate, or Title? yet perhaps the only Merit of those who have dictated for thirty Years last past in a neighbouring Country, and too often appeared to no better Advantage in ours.

• 130 Millions
of National Debt.

*Hâc Fonte derivatâ Glades * in Patriam Populumque fluxit!*

If a diffused landed Property be the strongest Tye of internal Peace and Security, what the contrary Policy has produced in
England

England may be guessed at by a cursory Review of the historical Facts recorded among us.

No sooner had William the Conqueror bestowed the Lands of the English upon his Norman Followers, but they became cruel Task-Masters over their miserable Vassals; for

Mensura Juris Vis erat:

And when neither the Sweat nor Labour of these was sufficient to support the Pride and Luxury of the former, now called Barons, Wars were commenced and carried on in every Corner of this Island; and from that Time the Tenures, termed Feodal, almost in the first Descent to Primo-geniture, as if

Sibi parant Malum, qui alterius Bonis injustè jactant,

became more emphatically stiled Feudal, as being the true Source of those Animosities which have caused Revolutions so often in this Kingdom; and perhaps is the old Leaven of Faction which sometimes takes up the specious Mask of Patriotism in our Days. When these domineering Landlords began to find the Government clip their assumed Usurpations, they professed themselves Patriots; and as Good is (now and then) drawn forth from Evil, so they obtained for their Fellow-Subjects, after many bloody Struggles, that beautiful Mountain-Nymph, *sweet Liberty*, under the fair Appearance, MAGNA CHARTA.

THIS, however, not securing more to the Nobility than the common People, and the Estates of the former being intailed on a Lineal Descent, few of them were sufficient to support their Rank, and to save a Provision for younger Children (the Fathers being only Tenants for Life). In consequence hereof, the Court soon became filled with these importunate Suitors, or "sturdy Beggars;" and the Royal Domains in a short Time

melting away in Grants, Reversions, &c. &c. &c. the Crown (saving the present Times) was often prevailed on to demand Subsidies from the People to enable it to satisfy the Clamours of rapacious Courtiers. Upon the Accession of Henry the Seventh, that politic Prince (whom the perilous Circumstances attending his Youth had made Master of worldly Wisdom) most readily gave his *Fiat* to an Act of Parliament, which, by discharging those Intails, gave the Nobility Power to alienate their Lands, in order to provide, at their own Discretion, for the younger Children, either by Gift, Mortgage, or Sale. In Process of Time, this reduced their exorbitant Possessions to a Mediocrity more suitable to a Free Community; and if some future Subdivisions had revived in their younger Progeny, at least, their original Yeomanry, (to say no worse) how is the State endamaged?

O fortunatos vere, Bona si sua habuerint Fratres!

Fundit Humo facilem victum justissima Tellus!

Their Titles, and 'tis to be hoped, Honours too, are as worthily enjoyed by the present Possessors of them.

SACRED Writ hath too often been perverted to worldly Ends, or the crafty Designs of intriguing Priests; witness the Persecutions, Cruzades, *Jus Divinum*, Bulls, Indulgencies, with the whole Train of Popish Trumpery, under the Cloak of Religion.

Olim

Religio peperit scelerosa atque impia Facta, says LUCRETIVS.

So this Pretension, by Primo-geniture, is said to have derived its Sanction from the Jewish Law; yet *Deuteronomy* XXI. 15, 16, 17, extends it to no more than a double Portion of Inheritance to what the other Children had; and for this

Reason

Reason, not unlikely, that as the first-born Male was to be redeemed from Sacrifice by the High Priest, so perhaps the Moiety of his Portion might go for the Fee.—If no Male Issue, then all the Daughters in equal Shares inherited the whole Possessions of the Father. Now we read*, that the *Israelites* held their Lands from no other Title but that of a Theocracy; wherefore, had a Succession in the Male Line, by Primogeniture only, been agreeable to Divine Goodness and Wisdom, would it not have been enacted in plain Terms, in lieu of the direct contrary Command? So much for it, *Jure Divino*.

* Numb. xxxvi. 8.

THE other Part of this Title, called Feudal Tenure, remains now to be considered. A great Authority on this Matter tells us, that

Antiquissimo Tempore sic erat in Dominorum Potestate connexum, ut quando bellent, auferre possent Rem in Feudum a se datum. Vide Lib. Feud. I. Tit. 1.

This, truly, gives a very cogent Reason: *Detur Fortiori* has often been practised with great Success, (*Vi et Armis*) under a Banner inscribed *Ultima Ratio Regum*; or, *Possessio undecim Partes Legis*; both clearly understood by the vulgar Aphorisms of, “Might overcomes Right;” or, “Possession is eleven Points of the Law.”

THIS Plea, however, continued no longer than the several conquering Nations of *Goths*, *Vandals*, and *Huns*, (the Invaders of the declining *Roman Empire*) found it necessary to maintain their Acquisitions by Military Tenures; for in Process of Time these barbarous Pagan Commanders became Profelites to Christianity. Afterwards choosing a King out of their Number, (to whom all agreed peaceably to submit) so soon as regular Subordinations in Government took place among them, this

Tenure was totally discountenanced, and laid aside, gradually revolving into the ancient patrimonial or equal Inheritance, in full Practice with the primitive Christians and Patriarchs. This Custom obtaining with our Saxon Ancestors, (as in Germany it doth to this Day)

*Teutonicis priscis Patrios succedit in Agros
Mascula Stirps omnis, ne foret ulla potens,*

was by them established here under a Law, by the Name of Gavel-kind. Lord *Raymond*, fol. 1024 and 1292. *Somner*, 8, 9, 115, 172. Nor was the Word *Feudum* so much as known here until the Year 1000, or about the Conqueror's Time. See *Gilb.* on Tenures, *ibid.* 102. It further seems plain, that it was Matter of Necessity in *William* the First to grant these Military Tenures, in order to gratify his Soldiers, (the common Case of every hostile Claim to a Crown) and not as the common Law of the Land; for this appears by the Charter he confirmed to the City of *London*, which runs thus:

Charta WILLIELMI CONQUESTORIS, Civitat. London.

" *WILLIAM* King grete *William* Bishop, and *Godfry* Port-
" greve, and all the Burgeis within *London*, *French* and *English*:
" And I grant you, That I will that you be all your Law-worth
" that ye were in *Edwardis* Days the King: And I will, That
" each Child be *his* Fader's Eyer: And I will nill suffer that
" any Man you any Wrongys beed.—And God you keep."—
Ex Libro pervetusto.

HERE the Pronoun *his* seems not only to imply the Sons, but the Daughters also; for the Rules of Grammar teach the inferior included in the superior Term of Speech; and those Times not being arrived to that Perfection of Law Quibbles, sometimes necessary to guard against in these politer ones. What followed

to the Reign of *Henry VII.* hath been already set forth. In consequence of the Act then passed, the Crown was deemed to be the Fountain of all Title to Lands, which gave Rise to the grand Maxim of Tenure, namely, That all Lands are holden mediately, or immediately, of the King.—*Anal. Leg. Ang. Lib. II. Cap. 3.* And it is not very unlikely, but that Custom, or long Usage of these original Feodal, or Military Tenures, given by the Conqueror, and his Successors, out of the forfeited Estates of such *English* only who bore Arms in favour of *Harold's* Title, in his and the succeeding Reigns, together with the unsettled Times which followed, might, in great Measure, contribute to involve all the rest of the Estates under the same Denomination and Descent accordingly in Primo-geniture.

THIS short Deduction of the Title (though an imperfect one) may probably shew that the Establishment of it as a Law cannot, in consequence of the foregoing Facts, be founded on the true Intent of all Law, namely, The natural Rights of Mankind; but rather seems (through, perhaps, Inadvertency) to be admitted in direct Opposition to it, and ought, therefore, to be looked on as totally unworthy of the Sanction now given to such an Act of Injustice and Oppression.

HAVING premised thus far, I shall beg Leave to lay before my Readers a Sketch of some Arguments, *pro* and *con.* touching the Expediency of annulling this Custom, so far as it regards the casual Event of a Father's dying intestate, possessed of a Freehold Estate, without personal Assets, or Marriage-Settlement; for it is not to be doubted, but that if the Hardships here enumerated had been attended to, backed by an humble Representation thereof to the Legislature, the innocent Victims to this most unreasonable prescriptive Law would obtain their Manumission equal to the rest of *English* free-born Subjects,

C 2

who

who are, by the Wisdom of our Laws, discharged of Fealty, Knight-Service and Suite, Vassalage, Villenage, and such like Reliques of Tyranny and arbitrary Power.

*Estne Dei Sedes, nisi Terra et Pontus et Aër,
Et Cælum et Virtus? Superos quid quærimus ultra?*

If interested, or short-sighted, Men should allege, that such an Alteration might defeat the Purposes of Marriage-Settlements, Devices by Will, &c. may it not be answered, That it cannot affect the minuteſt Article therein; one being a Covenant by Pre-contract between Party and Party, and the other depending wholly on the Right of the Devisor?

SECONDLY, That to attempt a Removal of this fruitful Mother of internal Feuds and Animosities will meet with great Opposition from the Sages of the Law, whose Fees so much depend on what heretofore was so emphatically expressed by a learned Brother, (now at Rest with his Ancestors) "The glorious Uncertainty of the Law:"

—— *Quid non mortalia Pectora cogis?*
Auri sacra Fames ——

Reply, Aye, that it would, and the Plea be d——d too, if set up in any other Age but this, which has produced more Honour to the Bar than all the preceding ones put together.

THIRDLY and lastly, Will not the Abolishing so venerable a Mark of Antiquity be a tender Point to touch upon, with a People so tenacious of their ancient Customs as we are? Let it be then replied, That if the *Russians* (confessedly our Inferiors in Science) are now become easy under the cruel Loss of their Beards, (condemned by the Czar *Peter* the Great) surely this barbed Arrow of the *Norman* Conqueror ought not to be permitted to transfix our innocent Posterity, increasing the Burden

Burden already so liberally thrown upon it, that of One Hundred and Thirty Millions of National Debt. Our *British* Ancestors were more generous when they fought naked to oppose the Invasion of *Julius Cæsar* !

To continue this Essay, a few Observations are offered, by Way of illustrating the Subject, to see if the present Mode doth, or whether the more equitable one, an *Agrarian* Distribution of Family Property, may, produce the greater Advantages to a Nation boasting of the Justice and Impartiality of its Constitution, leaving the Decision to abler Casuists.

UPON the Demise of a Father, under the Circumstances before related, all his Children under Age, or Minors, naturally become Wards of the Court of Chancery, which generally appoints the Mother and other Guardians over them, and proper Provision for their Education and Support, until the eldest Son and Heir becomes of Age, at which Time the Estate wholly is possessed by him. In the Interim, according to the common Process of polite Education, this Youth, at about Sixteen, is removed from School to the University, where those Seeds which were sown in him in Childhood produce a plentiful Harvest, viz. The Importance of his own Situation, from flattering Under-graduates; the learned Pate too often stooping to the "golden F—l." Here, after the Tutor has breakfasted at his Chambers, on the Days of Attendance, (while the Pupil dozes out his Hour in Bed) and learning every Thing in a Place where

Te insanire docent certâ Ratione, Modoque :

In five Years he arrives at the Senatorial Age of Twenty-one, when, behold, by the magical and sudden Effect of the Transposition of these two Numericals, he becomes endued with intuitive Wisdom, Probity, and Experience (like a * late self-

created

* *Αὐτογενής*

Not so much as
a Forty-Shilling
Freehold.

created Dictator) to direct, plan, and carve out the future Fates and Fortunes of all his Brothers and Sisters. What those generally are *, (*mutatis mutandis*) hath been already treated on; for

*Non facile emergunt, quorum Virtutibus, obstat,
Res angusta Domi.* — — —

Upon seizing and taking Possession of this Freehold Land, (the whole Estate) the first Step he is advised to by his Counsel, is to dock the Entail. By this he cuts off, from the Children of his own Father and Mother, the contingent Chance of Succession, in order to make them wholly dependent on his good Graces, during the Time he remains unmarried.—*Desunt cætera.* At length he marries a sole Heiress, and, by a *Smithfield* Bargain, doubles his Estate, settles in the Mansion-House of the Family, and residing there, his Country enjoys the Benefit of an upright Magistrate, and the Neighbours, that of his Generosity and diffused Hospitality. Thus are Twenty-five or Thirty Thousand Acres of *English* Freehold held, agreeable to the Spirit of the Sword, that is to say, Succession in Primo-geniture. A Portion of Inheritance vested in One, which would make Five Hundred Freeholders happy, can be deemed no other than held in Mortmain, because Leaseholders seldom form Projects of any Improvements, having nothing but their Leases to depend upon.

Neglectis urenda Filix innascitur Agris.

Thus much for the Advantages accruing to the State from the present Tenure, where the other Part of this Family, namely, the younger Brother, can never attain a Competency; and as to the Sisters, they may mourn their Virginity like *Jephtha's* Daughter, because what becomes of either, remains a Secret to this Day.

LET

LET us now proceed to try the Effects of the contrary Policy, viz. An equitable Distribution of this real Allodium, or Freehold, at the Decease of a Father, under the like Circumstances, as to Will, &c. The Widow has her Dower, and the Children under Wardship of the Court of Chancery are entitled to their respective Portions when of Age.

THE two Brothers are placed at School, when each, knowing his own Portion, finds no Grounds for Discontent or Contention; for

Nobilis hæc esset Pietatis Rixa duobus,

Quod pro Fratre mori vellet uterque prior.

The younger receives his Pocket Allowance of Six-pence per Week equally with the Elder; the Friends send in their Presents to the joint Address; and the clerical Master and Ushers are careful in their Instruction to both, not knowing as yet in whose Gift the next Presentation may fall.

— *Ridentem dicere verum* —

Quid vetat? —

The Brothers become indissolubly such; their Friendships and their Enmities a common Cause; are revered by their School-Fellows; and whether Dunces or otherwise, yet still they continue *Par nobile Fratrum*.

THEIR Lot being cast (as must be supposed) in a fair Ground, and each having a goodly Heritage, a laborious Profession not seeming requisite on that Account, whereby also they might crowd the Path of others, who had no other Dependence, an University Education is recommended for both, as being

Dives Agris, dives positus in Fœnore Nummis.

Brotherly

Brotherly Love, with their Age, still increasing, they soon gain the Admiration and Esteem of their Fellow-Students. This restrains the Libertine, and attracts the Virtuous to their Acquaintance. Each, with Candour, checks in the other the first Appearance of Vice; and the Younger following the placid Rule, *Cede Majori Natû*, in Honour of the Elder, proceeds until arrived at Age. During this Interval, the Sisters, bred up at Home under the Care of a good Mother, are early apprised of their Freedom and Independance, in order to encourage their attaining every Accomplishment necessary to preserve and improve their Property by a just Oeconomy, and their Rank by noble Acts of diffusive Benevolence. This makes them become the Objects of Desire; and, in due Season, the Family obtains Alliances equally important and happy.

THE Brothers, having also finished their Studies, return to the Family Seat; both agree to present the Mother with the Mansion-House and Demesne during her Life, and then retire in order to settle themselves in their respective Allotments. Riveted in their mutual Interests, they consult each other in the Cultivation and Improvements of it; to which their Brothers-in-Law, with Sincerity, and more Knowledge, most readily contribute their Assistance.

Generosa in Ortus Semina exurgunt suos. —

THUS connected, their several Families do not become the Rendezvous of Gamesters and Sharpers; no Jockeys to obtain Betts at Three in the Morning; none of your Six-Bottle Men, or drunken Country Witlings Obscenity or Blasphemy; but acting agreeably to their liberal Education, each Brother soon enters upon the matrimonial State upon rational Terms. In this Manner does the younger Branch of a Family, consisting
of

of one Brother and three Sisters, together with the eldest Brother, form Five distinct Generations, in lieu of one Monopoly vested in the present Mode, Primo-geniture.

IN the mean while, the Country flourishes; an Increase of Agriculture and Manufactures procures constant Employment for the Poor: Under no Necessity of pestering the Court for Places and Pensions, they glide through Life with Serenity, as Loyalists to their King, and true Patriots to their Country.

IN endeavouring to shew upon what a slight and sandy Foundation Succession in Primo-geniture is built, it is certain our Ancestors held their Lands, in *Edward* the Confessor's Days, (referred to in the Charter of *William* the First) by Bookland. *Sax. quasi Bookland, Terra Hæredatia vel Testamentaria; inde Terra Hæreditaria noncupata in Leges Aluredi, Cap. 26. Vide Charter, Copyhold, Freehold, and Landhoc. See also Glossarium in Decem Scriptores.* This was one of the Tenures by which the *English Saxons* held their Lands, and was always in Writing, and from thence called Bookland, and possessed by the Thanes, or Nobles, as *Prædium Nobile, Liberum & Inmane a Servitiis Vulgaribus & Servilibus.* It was the very same as *Allodium descendibile* (according to the common Course of Nations and of Nature) unto all the Sons, and therefore called Gavel-kind; *quasi dicas, give all Kindred, from the antient and modern German, Gebe alle Kindern;* devisable also by Will, and thereupon called *Terra Testamentalis*, as the Thane who possessed them was said to be *Testamento dignus*; but in Failure of such Will or Devise, it descended in Gavel-kind, namely, to all the Heirs Male in equal Proportions, *Vide Spelm. of Feuds, Cap. 5.* The Roman Laws were so clear in this Point,

D

that

that one Brother could oblige the other *σὺνα μερίσσειν*, to divide the Inheritance even to a Fig, MART. Lib. III. Cap. 11. —
Hæreditatem usque ad Assem, vel ad Ficum, distribuere. Ibid. —
Frater minuit medium Censum Equestrem Fratris. Ibid.

THE Tenour of all modern Deeds, Settlements, or Conveyances, still makes use of his or their Heirs in the Plural; and why the Elder should possess the Whole, in direct Injustice to his Brother, equal in Blood, seems a manifest Impeachment of the Rights and Liberties of free-born *English* Subjects. Whether this can be made to square with the Statute 12 Car. II. Cap. 24. which saith, "All Tenures, by Knight's Service of the King, or of any other Person; Knight's Service in Capite, or Socage; in Capite of the King, and the Fruits and Consequences hereof happened, or which shall or may happen or arise thereupon, or thereby, (such as Premier Seisin, &c.) are taken away or discharged; and all Tenures of Houses, Manors, Lands, &c. shall be construed and adjudged to be turned into free and common Socage, &c." must be referred by the Injured to that great Council of the Nation (which established this as positive Law) to decide. In Domes-Day Book it is allowed, that

Duo Fratres tenuerunt in Paragio; quisque habuit Aulam suam, & potuerint ire quo voluerint.

IF we would manifest the true Spirit of our boasted constitutional Happiness, and that every *British* Subject is born to enjoy the Blessings of equal Laws, which should to him inviolably secure the Rights and Privileges due to his Birth; let us, at least for the Sake of Posterity, (who must bear the Burthen of the accumulated national Debts and Taxes) with all Humility endeavour to prevail on the Legislature

gislature (in case Prescription for so unjust a Custom be pleaded for Law) to take off the Proscription now so heavy on the younger Branches, both Male and Female, in all the landed Families in the *British* Dominions; Orphans oppressed and distressed to the highest Degree, ready and willing to live by the Labour of their own Hands, but are prevented, and remain miserable useless Members of Society; dependent on, and subject to, the Caprice, Vanity, Pride, Folly, and Partiality of an elder Brother; and this, after passing their younger Years too, without Impeachment of their Duty and Affection to their common Parents. Shall the meanest Subject, and his Offspring, be regarded, cherished, supported, and preserved by the noble Benevolence of this Age*? and may not this innocent Race hope to move Compassion also? *Nullo Crimine infecti*, younger Brothers have neither House, nor Home, but suffer the Confiscation and Forfeiture of their Paternal Lands.

* See Foundling, and other noble Hospitals.

Leniter, ex merito quidquid patiare, ferendum est: Sed quæ venit indignè Pæna, graviter dolenda erit.

If a pretended Proprietary Right to Crowns, claimed by some Princes, (a Chimera raised out of this Abuse of private Inheritances) be now justly and constitutionally exploded with us, what Plea can hold whereby the arbitrary Succession in Primogeniture is suffered still to oppress, in the highest Degree too, an innocent Race of younger Brothers, equally Inheritors of *English* Freedom? Whether such Partiality can be defended by, or called, the Common Law, may be decided, by shewing it to be a direct Contradiction to the universal Law now subsisting throughout *Europe*, where the respective Sovereigns (as here also) being deemed the Fountain of all Title to Lands, so every Male, born his Subject, inherits as the Son of one common Father,

Father, and under Allegiance bound to fight for, and maintain, the Crown and Dignity of his Sovereign Lord. See *Codex Justin.* Ibid. *Constit. Aulae Caesaris, Auxsberg. Codex Frederic.*

Etat *; and in Lord Coke's Exposition of the Statute 27 Eliz. it should seem also, that the very Operation of Fines, *Sur Conuzance de Droit come Ceo que il ad de son Done,*

together with the Force of many subsequent Acts of Parliament, have demolished, and rendered inanimate, as the Giants in *Guildhall*, those two Huffers of the Law, Fee Simple and Fee Tail †; because these bugbear Titles really being, and the said Acts plainly defining them to be, mere Allodials, like Purchases by Bargain and Sale, cannot be, *ipso Facto*, otherwise descendible than to all Heirs Male in absolute Propriety, unless the Ancestor last seized, by his last Will or other Settlement, should have made another Disposition, by making one his sole Heir. This Right, if exerted, is detestable among all Mankind, unless for enormous Crimes in the other Children, and is limited by Law, through the indispensable natural Obligation he is under of providing for all his Family, *secundum Legem Naturæ*.

† By the Roman Law no Man could by Testament leave his Estate in Tail to the second Degree, unless vested in Trustees for Remainder, after Demise of the first Heir. *Prin. Equ. printed at Edinburg, 1760.*

Hæres Fidei Commissarius.

THIS was called a certain Rule in Law long before the Statute of Fines, and was so adjudged in Parliament, 18 Aff. Page 5; 18 *Edw. III.* 46, 6; and 9 *Hen. VI.* 23, 25, Lib. VIII. Fol. 3. Also in Doom's-Day Book of *Edward* the Confessor it is written, *Duo Fratres tenuerunt in Paragio, quisq; habuit Aulam suam, et potuerint ire quo voluerint.* Wherefore these several great Authorities seem all to agree, that Inheritances, now termed Fee Simple, were, *ab Origine*, no other than an equitable Law, or Custom, implanted in the Minds and Consciences of Men by the gracious Effusion of the Divine Spirit, whereby all Sons are Parceners alike, *et diversi Hæredes qui descendunt*

descendunt de eodem Stipite * ; which Law seems clearly confirmed to us by 12 Car. II. and other Statutes which have, in the most explicit Terms, taken away and abolished every Mark of *Norman Tyranny*, whose Tenures have now no other Support but Fraud, Violence, and Oppression. * Coke up on Littleton.

By suffering this Usurpation (of the Portions of younger Brothers) to reign, the Lands of our Country are held in Mortmain of the Lazy, Luxurious, and Vicious. Agriculture, the beloved Employment of the best Consuls and Dictators of *Rome*, is neglected, for the ridiculous Character affixed to the Epithet of *Milord Anglois*, in every Court in *Europe*, even to a Proverb. And if at home a visible Decrease of People is apparent, how are we and our Posterity to emancipate ourselves from the national Debts and Taxes, chiefly incurred by the enormous buccaneering Estates raised upon us, under the plausible Pretences of supporting an ill-grounded War? It is not among the puny and debauched Inhabitants of Cities and great Towns that Marriage will take place, but among a healthful and robust Yeomanry. Our Maidens now (as in the Extremity of Evils heretofore in *Israel*) are not given in Marriage; and though born, and equally designed to become, a more useful Member of Society, as a Land-Holder, with his elder Brother, the younger Son is obliged to prefer his humble Petition of "Put me, I pray thee, into one of the Priests Offices, that I may eat a Piece of Bread;" and, backed by Family Interest, he is preferred to those whose superior Merit may be their only, though better, Title to that Subsistence and Emolument. Much more might be added to evince the Futility of Succession in Primo-geniture alone, and stripping all the younger Branches of Families thereby of their natural Inheritances under the Colour of Common Law; a Measure which doth not appear in any of

Keate's Law of
Geneva.

"All Intestates
"Estates are e-
"qually divided
"among all his
"Children, both
"Male and Fe-
"male."

Quintilian. Instit.
Orat. Lib. VII.
Cap. 6.

Cicero pro Cecina
Orat. Cap. 23.

our Reports decreed as such, but taken *pro confesso* to be still subsisting. That pretended Right hath involved the Succession to the Lands of Intestates to pass to the eldest Son, as if the same had been so devised by the Father, through the Pride and Vanity of creating a large Family Estate, at the Expence of every other Child, contrary to all moral and divine Institutions. But in case all the foregoing Arguments are over-ruled in Favour of that Partiality, yet one Plea still remains in *Foro Conscientie* to be adjudged, namely, Who hath the greater Equity, he who claims a Share in the paternal Estate in common with his Brother, or he who seizes on the Whole, and excludes his Brother from even a Forty-Shilling Freehold? *Incommoda vitantis melior, quam commoda petentis est Causa* —

THUS may we hope it will be decreed in a Land whose Inhabitants have so liberally spent both Blood and Treasure,

Ut florerent æquis Legibus. — PHÆD. or

That we might flourish under equal Laws.

*Awd
2-29-27.*

F I N I S.

562